IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 8.11.2005

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THE HONOURABLE MR. JUSTICE P. SATHASIVAM
and
THE HONOURABLE MR. JUSTICE S.K.KRISHNAN

Writ Petition No.41378 of 2002

S. Jagadeesan .. Petitioner

versus

1. The Chief Education Officer,
   Vellore.

2. The Head Master,
   Government (Boys) Higher
   Secondary School,
   Arakkonam-631 002,
   Vellore District.

3. The Registrar,
   Tamil Nadu State Administrative
   Tribunal,
   Chennai-600 104. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issue of writ of Certiorarified Mandamus to call for the records relating to the last part of the judgment upholding the deduction in the petitioner's pay scale and pension and other retiral benefits passed by the Tamil Nadu State Administrative Tribunal, Chennai Bench in O.A.No.2839 of 1995 dated 8.11.2001 and quash the same and direct the second respondent to pay his pension and other retiral benefits as per the promotional post selection grade pay scale of Rs.2000-3200 vide the Pay fixation order dated 9.4.1990.

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for petitioner : Mr. S.Arunkumar

for respondent 1 : Mr. E.Sampathkumar
Govt. Advocate

for respondent 2 : No appearance

ORDER
(Order of the Court was made by
P. Sathasivam,J)

Aggrieved by the order of the Tamil Nadu Administrative Tribunal, Chennai, dated 8.11.2001 made in O.A.No.2839 of 1995, the petitioner herein has filed the above writ petition to quash the same and issue direction to the second respondent to pay his pension and other retiral benefits as per the promotional post selection grade pay scale of Rs.2000-3200 by the pay fixation order dated 9.4.1990.

2. According to the petitioner, he was appointed as a Secondary Grade teacher on 25.6.1959 at Municipal High School, Arakkonam and his services were regularised with effect from 24.8.1972. He was awarded selection grade in the B.T.Assistant with effect from 24.8.1982. When he was in selection grade of B.T.Assistant from 1972 to 1982, V Pay Commission submitted its report and revision of scale of pay came into effect from 1.6.1988. Based on the same, his scale of pay was refixed taking into consideration his initial service as teacher in the Elementary School in the year 1959 and taking note of his completed 30 years of service, Special Grade scale of pay of Rs.2000-3000 was fixed as Rs.2,180/- on 1.7.1989. Based on the same, his pay was fixed at Rs.2,675/- at the time when he approached the Administrative Tribunal. However, the said fixation was considered as wrong in the Audit for the period 1989-90. According to the Audit Department, the applicant was given selection grade in the secondary grade scale of pay at Rs.1045-1775, its corresponding scale of pay as per the V Pay Commission is Rs.1640-2900. The Audit objection further shows that instead of fixing the petitioner's scale of pay consequent to the V Pay Commission revision in the scale at Rs.1640-2900, his scale of pay was fixed erroneously in the scale of pay of Rs.2000-3200. In other words, instead of fixing his scale of pay at Rs.1820/- his scale of pay was wrongly fixed at Rs.2,180/-. Based on the Audit report, the Head Master, Government Higher Secondary School, Arakkonam, in his proceedings dated 20.3.1995, issued a recovery order for Rs.34,995/- to be recovered from him from April 1995

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onwards at the rate of Rs.1,000/- per month till his retirement and the balance due from him to be recovered from D.C.R.G. The petitioner has challenged the same in O.A.No.2839 of 1995 before the Tamil Nadu Administrative Tribunal, Chennai, on various grounds. The Tribunal, by the impugned order, after finding that the petitioner was not given opportunity before revised fixation of scale of pay based on the Audit report, allowed the Original Application in part viz. to the extent of recovery of excess amount of Rs.34,995/-, however, permitted the Department that pension and other retiral benefits will have to be done as per the revised scale of pay as ordered. Questioning the latter part of the order relating to pension and other retiral benefits, the petitioner has filed the above writ petition.

3. Heard learned counsel for the petitioner as well as learned Government Advocate for the first respondent.

4. In the light of the order to be passed hereunder, we are of the view that it is unnecessary to refer all the factual matrix as stated in the affidavit and the counter affidavit. The main grievance of the petitioner is that before passing the recovery order and the revision of scale of pay based on the V Pay Commission, the petitioner was not given opportunity to put forth his claim. The said objection was projected before the Tribunal and in fact, the Tribunal accepted his case and arrived a conclusion that in the absence of notice or opportunity, the recovery of excess pay at Rs.34,995/- cannot be recovered from the petitioner. To that extent, the Tribunal has granted relief. However, having found that the petitioner was not afforded opportunity before revising the scale of pay based on the V Pay Commission, as rightly pointed out by the learned counsel for the petitioner, the Tribunal ought to have remitted the matter to the authority concerned in order to put forth the objections/explanation of the petitioner. Though it is stated that the petitioner was given copy of the Audit objection, admittedly, he was not granted opportunity to show cause against reduction of his pay scale. It is not in dispute that because of the revised order, the petitioner has been visited with civil consequences, but admittedly had been granted no opportunity to show cause against the reduction of his basic pay. In other words, he was not even put on notice before his pay was reduced by the Department and as rightly pointed out by the learned counsel for the petitioner, the order came to be made behind his back without following the procedure known to law. Thus, there had been a flagrant violation of principles of natural justice and the petitioner has been made to suffer financial loss without being heard. Learned counsel for the petitioner has brought to our notice the decision of the Apex Court in Bhagwan Shukla vs. Union of India (1994-II L.L.N. 1074) wherein for not granting an

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opportunity to show cause against reduction of pay scale, the Honourable Supreme Court has set aside the order reducing his pay on the ground of violation of principles of natural justice. The said decision is squarely applicable to the case on hand. As said earlier, though the Tribunal has accepted the stand taken by the petitioner, unfortunately, has not granted the relief as claimed and committed an error in permitting the Department to revise the pension and other retirement benefits in accordance with the revised pay scale as pointed out by the Audit Department. The order of the Tribunal deserves to be set aside.

5. Under these circumstances, the order of the Tamil Nadu State Administrative Tribunal dated 8.11.2001 made in O.A.No.2839 of 1995 is quashed. Inasmuch as we are constrained to quash the order of the Tribunal only on the ground of violation of principles of natural justice, we permit the first respondent Chief Education Officer, Vellore to issue show cause notice to the petitioner and pass fresh orders after affording adequate opportunity to him. The abovesaid process shall be completed within a period of two months from the date of receipt of a copy of this order. The writ petition is allowed to the extent mentioned above. No costs.

Vu

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chief Educational Officer, Vellore.

2. The Head Master, Government (Boys) Higher Secondary School, Arakkonam-631 002, Vellore District.

3. The Registrar, Tamil Nadu State Administrative Tribunal, Chennai-600 104.

+ 1 cc to the Government Pleader SR No.44175
+ 1 cc to Mr.S. Arunkumar, Advocate SR No.44463

TS(CO)
SR/11.11.2005 W.P.No.41378 of 2002

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